

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	)	CASE NO.. 03-97808
	)	
DONNA RENEE NEARY,	)	CHAPTER 7
	)	
Debtor.	)	JUDGE DIEHL
_____	)	

**ORDER GRANTING TRUSTEE’S OBJECTION  
TO DEBTOR’S CLAIM OF EXEMPTIONS**

This matter is before the Court on the Trustee’s Objection To Debtor’s Claim of Exemptions. A trial on the matter was held before the Hon. Stacey W. Cotton on October 20, 2003. Subsequent to the hearing this case was reassigned to the undersigned Bankruptcy Judge. The Court, having reviewed the transcript of the hearing and the record in this case,<sup>1</sup> hereby GRANTS the Trustee’s Objection to Debtor’s Claim of Exemptions and determines that Debtor is limited to an exemption in the amount of \$10,000 pursuant to O.C.G.A. § 44-13-100(a)(1). This Order constitutes Findings of Fact and Conclusions of Law pursuant to Fed. R. Bank. Proc. 7052, made applicable by Fed. R. Bank. Proc. 9014.

**FINDINGS OF FACT**

The parties did not dispute the material facts of the case. Debtor Donna Renee Neary (“Debtor”) filed her Chapter 7 case on July 22, 2003. She is the sole record owner of the real

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<sup>1</sup>Upon reassignment of the case, the Court contacted counsel of record for both parties to determine whether the parties desired to present evidence before the undersigned judge or whether they would waive that opportunity and permit the court to decide the matter based upon the transcript of the hearing before Judge Cotton. Both parties indicated that they did not desire a further opportunity to present their case.

property in which she and her two children from a prior marriage reside. The property is located at 1526 McGarity Road, McDonough, Georgia. At the time Debtor filed her case, she was separated from her husband and a divorce action was pending in the Superior Court of Henry County. Debtor and her husband were married in July 1999 and separated in December 2001. Prior to the marriage, Debtor owned the property at issue and title remains in her name alone. Debtor's spouse resides in a separate property which is his sole property and for which he has filed for a homestead exemption under O.C.G.A. § 48-5-40. He has filed no claim in this bankruptcy case.

In her Schedule C, Debtor claimed the following exemptions under O.C.G.A. § 44-13-100(a)(1) and (a)(6):<sup>2</sup>

<u>Property</u>	<u>Value Claimed Exempt</u>
Residence	\$17,000.00
Checking Account	\$100.00
Personal Injury Claim	\$7,500.00
Tax Refund	\$2,000.00
Claim Against Spouse	\$200.00
Claim for Back Wages	\$100.00

The Trustee objected to the claim of exemptions, contending that Debtor should be limited to a homestead exemption of \$10,000 pursuant to § 44-13-100(a)(1). The Trustee also objects to Debtor's claim of exemption in certain other assets which he contends exceed the limits of O.C.G.A. § 44-13-100(a)(1) and (6). At the hearing, Debtor's counsel indicated that he would amend the

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<sup>2</sup>O.C.G.A. § 44-13-100(a)(6) permits the exemption of any property up to a value of \$600 plus any unused exemption, not to exceed \$5,000, under O.C.G.A. § 44-13-100(a)(1).

exemption claim with respect to insurance proceeds on account of personal bodily injury to be claimed under O.C.G.A. § 44-13-100(a)(11). The parties agreed that the amount of exemption available for the federal tax refund depended upon the court's determination of the amount allowable as the exemption under O.C.G.A. § 44-13-100(a)(1) and (6).

Debtor did amend her claim of exemptions to reflect that the personal injury exemption was claimed pursuant to § 44-13-100(a)(11). The other exemption claims that were the subject matter of the Trustee's objection turn on the amount Debtor is allowed to exempt under § 44-13-100(a)(1).

### CONCLUSIONS OF LAW

Pursuant to 11 U.S.C. § 522(b)(1) Georgia has opted out of the federal exemptions and limited its resident debtors to the exemptions provided under Georgia law. Georgia has codified state bankruptcy exemptions at O.C.G.A. § 44-13-100. Debtor claims an exemption in the amount of \$17,000<sup>3</sup> in the residence based upon O.C.G.A. § 44-13-100(a)(1) which was amended in 2001 to provide as follows:

(1) The debtor's aggregate interest, not to exceed \$10,000 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that own property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. In the event title to the property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$20,000. (Emphasis added)

O.C.G.A. § 44-13-100(a)(1). Debtor contends that the plain meaning the statute entitles her to the full \$20,000 since she is a married person, title to the property is solely in her name and she uses the

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<sup>3</sup>\$17,000 represents the full equity available in the property after deduction of non-avoidable liens. Debtor also claims to be entitled to the remaining \$3,000 under O.C.G.A. § 44-13-100(a)(6) as a part of her "unused exemption" under subparagraph (1).

property as a residence for herself and her dependents.

While Fed. R. Bank. Proc. 4003(c) provides that the objecting party has the burden of proving that exemptions are not properly claimed, the burden is on the Debtor to demonstrate that the exemption as claimed is of the type covered by the exemption statute. In re Gregoire, 210 B.R. 432, 436 (Bankr. D. R.I.1997); In re Blais, 220 B.R. 485, 491 (Bankr. S.D. Fla.1997); In re Moneer, 188 B.R. 25, 28 (Bankr. N.D. Ill. 1995).

Debtor's reliance on "plain meaning" is misplaced for several reasons. First, under Georgia law, the most important determinant of the meaning of a statute is legislative intent. "The cardinal rule of statutory interpretation is to ascertain the legislature's purpose in enacting a statute and then construe the statute to effect that purpose, avoiding interpretations that do not 'square with commonsense and sound reasoning.'" Insurance Dept. Of the State of Georgia v. St. Paul Fire & Casualty Insurance Company et al., 253 Ga.App. 551, 552, 559 S.E.2d 754, 756 (2002) quoting Simpson v. Southwire Co., 249 Ga.App. 406, 407(1), 548 S.E.2d 660 (2001). See also, Busch v. State, 271 Ga. 591, 592, 523 S.E.2d 21, 23 (1999) ("In construing a statute, our goal is to determine its legislative purpose. In this regard, a court must first focus on the statute's text. In order to discern the meaning of the words of a statute, the reader must look at the context in which the statute was written remembering at all time that the meaning of a sentence may be more than the separate words, as a melody is more than notes.") Here, the legislative history of the amendment to O.C.G.A. § 44-13-100(a) reflects that the legislature wanted to ensure that a family unit received the full exemption to which they would be entitled if the property were jointly owned, even under circumstances where the property was titled in only one spouse. See H.B. 373; 2001 Ga. Laws 745.

This is consistent with Georgia law's provision in O.C.G.A. § 48-5-40(3)(G) that "Only one homestead shall be allowed to an immediate family group." The concern of the legislature in amending O.C.G.A. § 44-13-100(a) was to protect the resident non-debtor spouse's interest in property where only one spouse filed for bankruptcy and property was titled only in the debtor-spouse. That is not the factual situation before the Court.

Second, the interpretation urged by the Debtor would lead to an absurd result for it would allow each of two debtor spouses to claim a full \$20,000 exemption in two separate residences so long as they filed two separate bankruptcy cases. Avoidance of an absurd result is another goal of statutory interpretation under Georgia law. New Amsterdam Cas. Co. v. Freeland, 216 Ga. 491, 495, 117 S.E.2d 538, 541 (1960) ("Where the letter of the statute results in absurdity or injustice or would lead to contradiction, the meaning of general language may be restrained by the spirit or reason of the statute."). The same "absurd result" exception to plain meaning has been followed by the federal courts. Lehman v. VisionSpan, Inc. (In re Lehman), 205 F.3d 1255 (11<sup>th</sup> Cir. 2000).

Third, the facts of this case make clear that the non-debtor spouse has made no claim on the residence. The husband has filed no claim in this case and the vague reference in the divorce petition to his claim for "an equitable share of all assets constituting marital assets," does not rise to the level of a claim on debtor's residence. Under Georgia law, "only property acquired as a direct result of the labor and investments of the parties during the marriage is subject to equitable division." Wright v. Wright, 277 Ga. 133, 133, 587 S.E.2d 600, 601, (2003), citing Payson v. Payson, 274 Ga. 231, 232(1), 552 S.E.2d 839 (2001). Here, the parties agree that the debtor had sole title to the home prior to the marriage. No evidence was offered as to any increase in value of the property during the

marriage or as a result of contributions by the spouses during the short marriage. The husband's lack of claim to this property is reinforced by his filing of a homestead exemption for property tax purposes under O.C.G.A. § 48-5-40 for the real property where he currently resides.

For the above reasons, Trustee's Objection is **GRANTED**. Debtor's exemption under O.C.G.A. § 44-13-100(a)(1) is limited to \$10,000. Debtor is directed to amend Schedule C to reflect this limited amount.

**SO ORDERED**, this \_\_\_\_ day of April, 2004.

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MARY GRACE DIEHL, JUDGE  
UNITED STATES BANKRUPTCY COURT